

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Gregory M. Fehn

Serial No: 08/917,044

Filed: August 19, 1997

For: CONTAINER WITH RECYCLED
PLASTIC

) Group Art Unit 1772
)
) Examiner C.R. Nold
)
Batch No. C76
)
)

**PETITION TO REVIVE
UNDER 37 C.F.R. 1.137(a)**

RECEIVED

FEB 17 2000

The Assistant Commissioner for Patents
Washington, D.C. 20231

OFFICE OF PETITIONS
DEPUTY A/C PATENTS

Sir:

Applicant hereby petitions to the Commissioner of Patents and Trademarks to revive the above-identified application pursuant to 37 C.F.R. 1.37(a). This Petition to Revive is being filed in order to show that the abandonment of the application was unavoidable. Accordingly, it explains Applicant's attorney's office docketing procedures and provides facts showing that reliance upon the undersigned attorney's law partner, Ms. Gail Friedman, represented the exercise of due care. Title 35 U.S.C. 151 authorizes the acceptance of a delayed payment of the issue fee, if the issue fee "is submitted . . . and the delay in payment is shown to have been unavoidable." The facts will show that the delay in paying the issue fee in this case was unavoidable.

On approximately October 19, 1999, the undersigned attorney received the Notice of Allowability in this case. He docketed the due date of the issue fee, which was January 7, 2000, in his five-year calendar in red pen. (A copy of the docket page is attached as Exhibit A) He also docketed the date one month before the issue fee was due, December 7, 1999, in pencil in his five year calendar to warn himself that the issue fee was due in one month. (A copy of the docket page is attached as Exhibit B) Then he wrote a note to his law partner, Ms. Friedman, giving the due date of the issue fee and changes that needed to be made to the drawing. That note and the file, including the drawing that needed to be changed and Form PTOL-85B, were given to Ms. Friedman in person on October 19, 1999. Then Ms. Friedman, following the normal office rou-

tine, docketed the date of the issue fee in the law firm calendar in red pen. (A copy of the docket page is attached as Exhibit C) She also docketed the date one-month before the issue date was due in pencil in the law firm calendar as a reminder that the issue fee was due in one month. (A copy of the docket page is attached as Exhibit D) She then delivered the drawing to the draftsman for the required change. On October 22, 1999, Ms. Friedman prepared office check no. 5152 in the amount of \$1240.00, which included \$1210.00 for the issue fee and \$30.00 for the advance order of ten copies of the patent when issued. She then prepared a document entitled **SUBMISSION OF ISSUE FEE**, which included a Certificate of Mailing which she dated October 27, 1999, to be signed by the undersigned attorney; Form PTOL-85B, which included a Certificate of Mailing which she also dated October 27, 1999, to be signed by the undersigned attorney; and a stamped self-addressed envelope. (Copies of the **SUBMISSION OF ISSUE FEE**, Form PTOL-85B, check no. 5152 in the amount of \$1240.00, and the self addressed stamped envelope are attached as Group Exhibit E) On approximately October 24, 1999, after receiving the revised drawing, which was to be submitted with the issue fee, from the draftsman, Ms. Friedman typed identifying information on the drawing. On October 25, 1999, Ms. Friedman brought the undersigned attorney the file for the above-identified matter, which included the document entitled **SUBMISSION OF ISSUE FEE**, Form PTOL-85B, one sheet of formal drawings, check no. 5152, and a self addressed postcard, for his review and signature.

The undersigned attorney requested that Ms. Friedman keep the file until the next day as he was involved in a project at that moment and could not review the file. Ms. Friedman took the file from the undersigned attorney and put it on a table in the outer office preparing to give it back to the undersigned attorney the following day. Instead, Ms. Friedman put some other papers on top of the file and forgot to give the file back to the undersigned attorney on October 26, 1999, or at any time prior to the due date of the issue fee. When the undersigned attorney saw the penciled reminder of the issue fee due date and the actual issue fee due date in red pen in his calendar, he thought that the issue fee had already been paid. He did not remember that he had never reviewed and signed the documents. When Ms. Friedman saw the penciled reminder of the issue fee due date and the actual issue fee due date in red pen in the office calendar, she thought that she had given the documents and drawing to the undersigned attorney to review and sign and

had sent the issue fee payment with the documents and drawing to the Patent and Trademark Office.

When Ms. Friedman began to file the papers on the table in the outer office, she saw the file for the above-identified case with the unsigned papers on top of it and realized that they had never been sent. Until that very moment, she thought that she had taken care of filing all the necessary papers.

Under the supervision of the undersigned attorney, Ms. Friedman prepares all the papers necessary for the filing of issue fees. In addition, she takes the responsibility of mailing all documents relating to issue fees to the Patent Office, after the undersigned attorney has reviewed and signed them. She currently practices before the Trademark Office and realizes the importance of taking action in the PTO by their respective due dates.. (Ms. Friedman's Declaration is attached as Exhibit F)

On Friday, January 14, 2000, when Ms. Friedman became aware that the issue fee due on January 7, 2000, for the above-identified case had not been paid, she immediately informed the undersigned attorney of this delay in the payment. On January 17, 2000, Ms. Friedman researched the federal regulations and the MPEP in reference to failure to timely pay an issue fee. On January 18, 2000, the undersigned attorney telephoned Ms. Jennifer Hayes at the Petitions Office to discuss the delay with her. Approximately a week later, the undersigned attorney spoke with Ms. Hayes and discussed how the delay had arisen and the best way to proceed. As soon as the undersigned attorney became aware of the failure to pay the issue fee, he acted with due diligence to rectify the situation.

Applicant's attorney followed extensive steps to assure compliance with the due date of the issue fee, including having an extensive double docketing system and relying on a worthy and reliable law partner. This is the same diligence that he applies to every case that he prosecutes in the Patent Office and to his law practice as a whole. The failure to timely pay the issue fee was the unexpected and unforeseen failure of himself and his law partner, such failure being unavoidable. Based on the above, Applicant's application should be revived pursuant to 37 C.F.R. 1.137(a). This action is sincerely requested.

Enclosed is check no. 5214 of the undersigned attorney. Any required fee not paid for by the enclosed check may be charged to Deposit Account 06-2135 of the undersigned attorney.

In addition, Applicant encloses the **SUBMISSION OF ISSUE FEE**, Form PTOL-85B, one sheet of formal drawings, and check no. 5152 of the undersigned attorney in the amount of \$1240.00 for the required issue fee and the advance order of ten copies of the patent when issued.

Respectfully submitted,



Eugene F. Friedman
Attorney for Applicant
Reg. No. 25,627

Eugene F. Friedman
Friedman & Friedman, Ltd.
Monadnock Building -- Suite 1633
53 West Jackson Boulevard
Chicago, Illinois 60604
(312) 922-8882
Dated: February 10, 2000

CERTIFICATE OF MAILING

I certify that this correspondence is being deposited with the U. S. Postal Service in an envelope with sufficient postage as first class mail and addressed to:

The Assistant Commissioner for Patents
Washington, D.C. 20231

on February 10, 2000.

Gail Tuler Friedman

Best Available Copy

DECEMBER

| SUNDAY | MONDAY | TUESDAY | WEDNESDAY | THURSDAY | FRIDAY | SATURDAY |
|---------------------------|--------|--|-----------|----------|---------------------------------|---------------------|
| | | | 1 | 2 | 3 HANUKKAH BEGINS AT SUNDOWN | 4 HANUKKAH |
| 5 | 6 | 7 C3P-1298-Fedn Isse Feret Drawings (-1 mo.) (pencil) | 8 | 9 | 10 | 11 |
| 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| 19 | 20 | 21 | 22 | 23 | 24 | 25 CHRISTMAS DAY |
| 26 BOXING DAY (CANADA) | 27 | 28 | 29 | 30 | 31 | |

November

| | | |
|----|----|--|
| S | M | |
| 1 | | |
| 2 | 3 | |
| 4 | 5 | |
| 6 | 7 | |
| 7 | 8 | |
| 14 | 15 | |
| 21 | 22 | |
| 28 | 29 | |

December

| | | |
|----|----|--|
| S | M | |
| 5 | 6 | |
| 12 | 13 | |
| 19 | 20 | |
| 26 | 27 | |

January

| | | |
|----|----|--|
| S | M | |
| 2 | 3 | |
| 9 | 10 | |
| 16 | 17 | |
| 23 | 24 | |

February

| | | |
|----|----|--|
| S | M | |
| 6 | 7 | |
| 13 | 14 | |
| 20 | 21 | |
| 27 | 28 | |

March

| | | |
|----|----|--|
| S | M | |
| 5 | 6 | |
| 12 | 13 | |
| 19 | 20 | |
| 26 | 27 | |

April

| | | |
|----|----|--|
| S | M | |
| 2 | 3 | |
| 9 | 10 | |
| 16 | 17 | |
| 23 | 24 | |

EXHIBIT A

Best Available Copy

JANUA

| SUNDAY | MONDAY | TUESDAY | WEDNESDAY | THURSDAY | FRIDAY | SATURDAY |
|--------|-----------------------------------|---------|-----------|----------|--|--|
| | | | | | | NEW YEAR'S DAY |
| 2 | 3 | 4 | 5 | 6 | 7 CSP. 1289 - Fols Issue File & Directories (red ink) | 8 |
| 9 | 10 | 11 | 12 | 13 | 14 | 15 MARTIN LUTHER KING, JR.'S BIRTHDAY |
| 16 | 17 MARTIN LUTHER KING, JR. DAY | 18 | 19 | 20 | 21 | 22 |
| 23 | 24 | 25 | 26 | 27 | 28 | |
| 30 | 31 | | | | | |

EXHIBIT B

November 1999

| S | M | T | W | T | F | S |
|----|----|----|----|----|----|----|
| 1 | 2 | 3 | 4 | 5 | 6 | |
| 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| 21 | 22 | 23 | 24 | 25 | 26 | 27 |
| 28 | 29 | 30 | | | | |

December 1999

| S | M | T | W | T | F | S |
|----|----|----|----|----|----|----|
| | 1 | 2 | 3 | 4 | 5 | 6 |
| 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 26 | 27 | 28 | 29 | 30 | 31 | |

January 2000

| S | M | T | W | T | F | S |
|----|----|----|----|----|----|----|
| | 1 | 2 | 3 | 4 | 5 | 6 |
| 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 9 | 10 | 11 | 12 | 13 | 14 | 15 |
| 16 | 17 | 18 | 19 | 20 | 21 | 22 |
| 23 | 24 | 25 | 26 | 27 | 28 | 29 |
| 30 | 31 | | | | | |

February 2000

| S | M | T | W | T | F | S |
|----|----|----|----|----|----|----|
| | 1 | 2 | 3 | 4 | 5 | 6 |
| 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| 20 | 21 | 22 | 23 | 24 | 25 | 26 |
| 27 | 28 | 29 | | | | |

1999 DECEMBER

Tuesday

341/024 WEEK 49

7

Morning

8:00

C37 - 1298 12 Feb 1999

9:00

Issue Fee & Draw
(general)

10:00

11:00

12:00

1:00

2:00

3:00

4:00

5:00

6:00

Evening

EXHIBIT C

MAP-GLANCE®

JANUARY 2000

7 Friday
007359 WEEK 1

December 1999
S M T W T F S
1 2 3 4
5 6 7 8 9 10 11
12 13 14 15 16 17 18
19 20 21 22 23 24 25
26 27 28 29 30 31

January 2000
S M T W T F S
1 2 3 4 5 6 7 8
9 10 11 12 13 14 15
16 17 18 19 20 21 22
23 24 25 26 27 28 29
30 31

Morning

8:00 C37-129a = Tech
Issue Fee & Drawings
9:00 (red ink)

10:00

11:00

12:00

1:00

2:00

3:00

4:00

5:00

6:00

Evening

EXHIBIT D

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Gregory M. Fehn)
Serial No: 08/917,044) Group Art Unit 1772
Filed: August 19, 1997)
For: CONTAINER WITH RECYCLED) Examiner C.R. Nold
PLASTIC) Batch No. C76

~~100~~

SUBMISSION OF ISSUE FEE

The Commissioner of Patents and Trademarks
Washington, D. C. 20231

RECEIVED

FEB 17 2000

Box ISSUE FEE

OFFICE OF PETITIONS
DEPUTY A/C PATENTS

Sir:

In response to the **NOTICE OF ALLOWANCE** of October 7, 1999, Applicant submits check no. 5152 of the undersigned attorney for \$1240.00 for the issue fee of \$1210.00 in the subject application and \$30.00 for the advance order of ten copies of the patent when issued. Any required issue fee or advance order fee not paid for by an enclosed check may be charged to Deposit Account 06-2135 of the undersigned attorney. Applicant also encloses Form PTOL-85B and one sheet of formal drawings. This should satisfy the requirements for the issuance of the subject application.

Respectfully submitted,

Eugene F. Friedman
Attorney for Applicant
Reg. No. 25,627

Eugene F. Friedman
Friedman & Friedman, Ltd.
Monadnock Building -- Suite 1633

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Gregory M. Fehn

Serial No: 08/917,044

Filed: August 19, 1997

For: CONTAINER WITH RECYCLED
PLASTIC

-) Group Art Unit 1772
-) Examiner C.R. Nold
-) Batch No. C76

*RECEIVED***DECLARATION OF GAIL TULER FRIEDMAN**

Gail Tuler Friedman declares as follows:

1. She is a law partner in the firm of Friedman & Friedman, Ltd.
2. Her sole partner in the firm is Eugene F. Friedman
3. On October 19, 1999, she received the file in the above-identified case and a note written by Mr. Friedman, giving the due date of the issue fee and changes that needed to be made to the drawing. That note and the file, including the drawing that needed to be changed and Form PTOL-85B, were given to Ms. Friedman in person on October 19, 1999.
4. Following the normal office routine, she docketed the date of the issue fee in the law firm calendar in red pen. She also docketed the date one-month before the issue date was due in pencil in the law firm calendar as a reminder that the issue fee was due in one month. She then delivered the drawing to the draftsman for the required change.
5. On October 22, 1999, she prepared office check no. 5152 in the amount of \$1240.00, which included \$1210.00 for the issue fee and \$30.00 for the advance order of ten copies of the patent when issued. She then prepared a document entitled **SUBMISSION OF ISSUE FEE**, which included a Certificate of Mailing which she dated October 27, 1999, to be signed by the undersigned attorney, and Form PTOL-85B, which included a Certificate of Mailing which she also dated October 27, 1999, to be signed by the undersigned attorney.
6. On approximately October 24, 1999, after receiving the revised drawing from the draftsman, she typed identifying information on the drawing to be submitted with the issue fee.

EXHIBIT F

7. On October 25, 1999, she brought Mr. Friedman, an attorney registered to practice before the Patent Office, the file for the above-identified matter, which included the document entitled **SUBMISSION OF ISSUE FEE**, Form PTOL-85B, one sheet of formal drawings, check no. 5152, and a self addressed postcard for his review and signature.

8. Mr. Friedman requested that she keep the file until the next day as he was involved in a project at that moment and could not review the file.

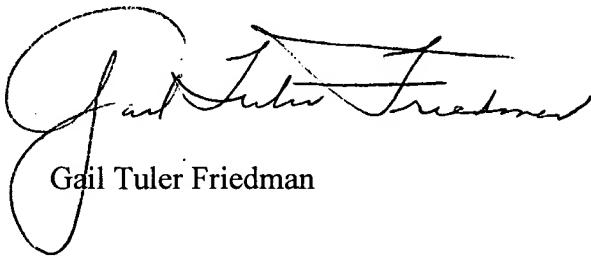
9. She took the file from Mr. Friedman and put it on a table in the outer office preparing to give it back to him the following day. Instead, she put some other papers on top of the file and forgot to give the file back to Mr. Friedman on October 26, 1999, or at any time prior to the due date of the issue fee.

10. When she saw the penciled reminder of the issue fee due date and the actual issue fee due date in red pen in the office calendar, she thought that she had given the documents and drawing to the undersigned attorney to review and sign and had sent the issue fee payment with the documents and drawing to the Patent and Trademark Office.

11. When she began to file the papers on the table in the outer office on January 14, 2000, she saw the file for the above-identified case with the unsigned papers on top of it and realized that they had never been sent. Until that very moment, she thought that she had taken care of filing all the necessary papers.

12. She currently practices before the Trademark Office and realizes the importance of taking action in the PTO by their respective due dates.

The undersigned declares that all statements made herein of her own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or document or any registration resulting therefrom.



Gail Tuler Friedman

Dated: February 10, 2000